IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18864 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARVODAY SEVASHRAM TRUST THROUGH TRUSTEE - Petitioner(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

MR MK VAKHARIA for Petitioner(s) : 1,
MR. MR MENGDEY, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 6.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/09/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioner-Trust has challenged the legality and validity of the judgment and order passed

by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 13.7.2005 passed in Revision Application No.55/2004 in dismissing the said Revision Application and confirming the order passed by the Collector, Surendranagar dated 13.9.2004 passed in RRT Revision Application No.68/2002.

2. The dispute is with regard to the entry in respect of the land bearing Survey No.377 situated at village Adariyana, Taluka Dasada which was granted in favour of the petitioner-Trust by the Collector, Surendranagar being a restricted land for the personal cultivation of Trust for agricultural use. The said land in question was being cultivated by the respondent Nos.5 and 6 and one another person and the names of the respondent Nos. 5 and 6 were mutated in the revenue records since 1967-68 and the same came to be challenged by the petitioner before Mamlatdar, Patdi and Mamlatdar, Patdi by his order dated 13.3.2003 passed an order in Panipatrak Case No.3/2002 directing to delete the names of aforesaid two persons i.e. respondent Nos. 5 and 6 from the record of rights and directed to mutate the name of the petitioner-Trust in the revenue record. Being aggrieved and dissatisfied with the order passed by the

Mamlatdar, Patdi dated 13.3.2003 passed in Panipatrak Case No.3/2002, the respondent Nos.5 and 6 preferred appeal before the Dy. Collector, Dhangadhra being appeal No.5/2002 and the Dy. Collector, Dhangadhra dismissed the said appeal against which the respondent Nos. 5 and 6 preferred RRT Revision Application No.68/2002 before the Collector, Surendranagar and the Collector, Surendranagar by his order dated 13.9.2004 allowed the said Revision Application quashing and setting aside the order passed by the Mamlatdar, Patdi as well as Dy. Collector, Dhangadhra dated 13.3.2003 and 30.6.2003. Being aggrieved and dissatisfied with the order passed by the Collector, Surendranagar dated 13.9.2004 passed in RRT Revision Application No.68/202, the petitioner preferred Revision Application being Revision Application No.55/2004 before the Secretary (Appeals), Revenue Department, State of Gujarat and the Joint Secretary (Appeals), Revenue Department, State of Gujarat by his order dated 13.7.2005 dismissed the said Revision Application confirming the order passed by the Collector, Surendranagar dated 13.9.2004 passed in RRT Revision Application No.68/2002. Being aggrieved and dissatisfied with the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of

Gujarat dated 13.7.2005 passed in Revision Application No. 55/2004, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri M.K.Vakharia, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Collector, Surendranagar has materially erred in quashing and setting aside the order passed by the Mamlatdar, Patdi dated 13.3.2003 by which it was directed to delete the names of respondent Nos. 5 and 6 and to mutate the name of the petitioner-Trust. It is also further submitted that the names of respondent Nos.5 and 6 are wrongly mutated in the record of rights and earlier in the year, 1960 it was mentioned that the respondent Nos. 5 and 6 are cultivating the land in question as a labourer but thereafter, the said entry came to be modified in the year 1967-68 in which the name of the respondent Nos.5 and 6 came to be mutated in the revenue record as cultivator which was not proper and there was manipulation in the record and therefore, it is submitted that the Mamlatdar, Patdi has rightly directed to delete the names of respondent Nos. 5 and 6 and mutate the name of the petitioner-

Trust. Therefore, it is requested to allow the present Special Civil Application.

4.It is not in dispute that the entry in favour of respondent Nos. 5 and 6 as cultivators was since 1967-68 and no attempts were made on behalf of the petitioner-Trust to challenge the same till 2002-2003. It appears from the record that as the petitioner-Trust wanted to evict these persons (respondent Nos.5 and 6) they had filed Civil Suit and obtained interim relief and therefore, for the first time the said entry came to be challenged in the year 2002-2003. It was contended on behalf of the respondent Nos.5 and 6 before the authority, more particularly, Collector as well as Secretary (Appeals) that they were not heard by the Mamlatdar, Patdi before passing the order dated 13.3.2003 and they are in occupation and possession of the land in question and it is agricultural land and Civil Suit is already filed to protect their possession and the interim relief was granted in favour of the respondent Nos.5 and 6. Considering the facts and circumstances of the case, more particularly, considering the fact that the respondent Nos.5 and 6 were cultivating the land in question and were in

possession of the land in question, proceedings came to be initiated to forfeit the land in question and ultimately the land came to be forfeited which came to be confirmed and even the same is also came to be confirmed by this Court. Even otherwise, entry of 1967-68 in favour of respondent Nos.5 and 6 could not have been challenged by the petitioner in the year 2002-2003 after a period of 34 years. It is not believable that the trustees were not aware of the said entry. It is also required to be noted that even the trustees were not residing and cultivating the land in question which was granted to them for their own agricultural use.

5. Under the circumstances, the order passed by the Collector, Surendranagar and confirmed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat are not required to be interfered with as the same cannot be said to be in any way illegal and/or perverse and/or without jurisdiction.

6. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

(M.R.SHAH, J.)

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